

FILED

AUG 29 2016

CLERK SUPREME COURT

**In the Iowa Supreme Court**

<b>Request for Public Comment on</b>	)	
<b>Proposed Changes Regarding</b>	)	<b>Order</b>
<b>Death and Disability Planning</b>	)	
<b>by Iowa Attorneys</b>	)	

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The Iowa Supreme Court seeks public comment on proposed amendments to Iowa Court Rule 39.18 and associated rules regarding death and disability planning by Iowa attorneys.

After a previous 60-day public comment period, during which time the court did not receive any comment relating to then-proposed rule 39.18, the court on November 20, 2015, adopted Iowa Court Rule 39.18 requiring sole practitioners to have a written succession plan for their law practices.

The proposed amendments to rule 39.18 now before the court originated from The Iowa State Bar Association Rule 39.18 Study Committee (ISBA committee). The key provisions of the ISBA request include the following:

- The proposed amendments would create two “tiers” of succession planning. The first tier would be a mandatory short form designation of an assisting attorney or entity as part of the annual questionnaire filed with the Client Security Commission. The designation would identify the assisting attorney, law firm (which could be the planning attorney’s own firm, if the planning attorney is a member of a firm), or qualified lawyer servicing association. The designation also would identify where records are located, including the current client list, and authorize the assisting attorney or entity to perform tasks necessary to protect the interests of clients. The listed tasks include reviewing client files, notifying clients of the planning attorney’s death or disability, determining if other actions are necessary to protect the clients’ interests, and administering the planning attorney’s trust account.
- The second tier would be a written plan created by the planning attorney that would be optional but encouraged. In the optional written plan, the planning attorney would be able to provide further guidance and authority to perform law firm management and administrative tasks. Those tasks include collecting fees, paying law firm expenses and client costs, compensating staff, terminating leases, and selling the practice.
- All attorneys in private practice would be required to complete the first

tier, mandatory short form designation, as part of the annual client security questionnaire. If a planning attorney is a member of a law firm that includes other Iowa attorneys in good standing, the planning attorney may designate his or her own firm as the assisting law firm.

- Attorneys not in private practice in Iowa would be permitted to provide that response to a direct question on the annual questionnaire, and would not be required to complete the remainder of that portion of the questionnaire pertaining to succession planning.
- Maintenance of a current client list would be required on the part of all attorneys in private practice.
- The assisting attorney or entity would be authorized to apply to the district chief judge for an order confirming the death or disability of the planning attorney.
- A qualified lawyer servicing association would be defined as a bar association all or part whose members are admitted to practice in Iowa, a company authorized to sell professional liability insurance to Iowa attorneys, or an Iowa bank with trust powers issued by the Iowa Department of Banking.
- The assisting attorney or entity would be authorized to petition for appointment of a trustee under the provisions of Iowa Court Rules 34.17 or 34.18, as applicable, if the assisting attorney or entity believes it beneficial to be court appointed as a trustee, or believes it appropriate that an independent trustee be appointed. In any situation in which a trustee appointment under rules 34.17 or 34.18 is applied for, the new rules would require the chief judge to give due regard to any designation or stand-by nomination made by a planning attorney under the provisions of Iowa Court Rule 39.18.
- The Office of Professional Regulation would not implement the new mandatory portion of the annual client security report until the 2018 reporting season.
- The proposed amendments to rule 39.18 would include appropriate amendments to rule 34.17 (disability suspension) and rule 34.18 (death, suspension, or disbarment of practicing attorney).

The ISBA committee studying rule 39.18 believes that adding a mandatory short form designation as part of the annual client security questionnaire would make it easier for Iowa attorneys to fulfill the basic planning requirement, place information regarding every private practitioner's plan in the possession of the Client Security Commission for quick retrieval,

prompt annual updating by the attorney as part of the annual reporting process, and obviate the need for auditors of the Client Security Commission to check on succession planning during trust account audits. Iowa attorneys nonetheless would have the option of authoring their own, more expansive written plans to address matters not covered in the mandatory short form designation.

Prior to further consideration of the proposed amendments to rule 39.18, the court seeks public comment on the amendments. The proposed amendments, the report of the ISBA Rule 39.18 Study Committee, and a letter against the ISBA committee report are provided with this order and may be found on the Iowa Judicial Branch website at: [http://www.iowacourts.gov/About the Courts/Supreme Court/Orders](http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Orders). In addition, copies are available at the office of the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319.

Any interested organization, agency, or person may submit comments regarding the proposed amendments. All comments must refer to the specific rule number (for example, rule 39.18(3)) and the specific numbered line or lines to which the comments refer. Comments sent by email must be emailed to **rules.comments@iowacourts.gov**, must state **“Proposed Amendments to Rule 39.18”** in the subject line of the email, and must be sent **as an attachment to the email in Microsoft Word format**. Instead of submission by email, comments may be delivered in person or mailed to the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa, 50319.

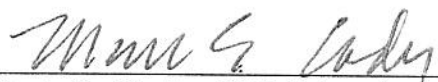
**The deadline for submitting comments is 4:30 p.m. on October 31, 2016.**

To accommodate further consideration of rule 39.18 and the 60-day

public comment period on proposed amendments to the rule, the court amends by this order the effective date for the current Iowa Court Rule 39.18—Requirement for Death or Disability Plan, which currently is January 1, 2017. **The effective date for current rule 39.18, is now delayed until January 1, 2018.**

Dated this 29th day of August, 2016.

The Iowa Supreme Court

By   
Mark S. Cady, Chief Justice